

STONE MAGNANINI

COMPLEX LITIGATION

December 19, 2022

VIA CM/ECF

Hon. Judith C. McCarthy, U.S.M.J.
United States Courthouse
300 Quarropas Street
White Plains, NY 10601

Re: *Hayden v. IBM, et al.*, Case No. 7:21-cv-02485-VB

Dear Judge McCarthy:

Since the last discovery conference in this matter held on December 1, 2022, the parties have been working diligently to resolve disputes concerning documents listed on Plaintiff's privilege logs. As directed by the Court, the parties met and conferred concerning the highlighted documents Defendants presented to the Court: 81 communications between Plaintiff and government agencies and 583 communications involving non-attorneys. Plaintiff has reviewed all of these documents and discussed the production of the vast majority of these documents pursuant to the protections afforded by Fed. R. Evid. 502(d).

Additionally, Plaintiff has identified 31 documents (from the 664 documents identified above) that Plaintiff will not disclose pursuant to Rule 502(d); these documents can be divided into three categories which Plaintiff describes as follows: (1) Plaintiff's communications at counsel's direction with a retained expert for purposes of the instant litigation; (2) Plaintiff's communications with third-parties concerning terms of retainer agreements or engagement letters with past counsel which Plaintiff and those parties jointly retained; (3) communications with counsel incorporated in communications with third-parties who were jointly represented by such counsel; a meet and confer concerning these documents is ongoing.

At present, it appears to Defendants that at least some of the 31 documents identified above will need to be submitted to the Court *in camera* and briefed by the parties. In an effort to further narrow any issues for resolution by the Court, the parties seek an extension of time such that Plaintiff may produce in redacted form those documents of the 31 that Plaintiff intends to redact along with a revised log for those 31 documents. Plaintiff expects to do so by December 23, 2022. The parties propose to meet and confer further and to submit a joint letter on January 4, 2023 identifying any remaining issues to be addressed by the Court.

The parties are discussing the form of any Rule 502(d) stipulation/order, including whether a separate order is required or whether the parties can rely on the 502(d) protections already provided in the Amended Protective Order (Dkt. 79). To the extent the parties believe a separate order is required, they will submit to the Court by the end of this week any proposed order.

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Respectfully submitted,

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